

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
BRIEF**

ORIGINAL
75-7039

United States Court of Appeals
FOR THE SECOND CIRCUIT

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

against

B
P/S

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14,

ET AL.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF APPELLANT TOWN OF BETHLEHEM

O'MALLEY, DENEEN, MESSINA
& OSWECKI

Attorneys for Appellant

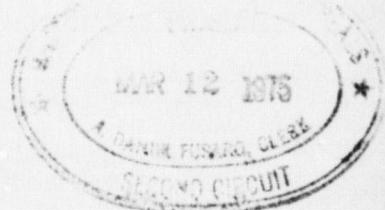
Town of Bethlehem

20 Maple Avenue

Windsor, Connecticut 06095

ANDREW G. MESSINA, JR.

DONALD J. DENEEN
of Counsel



V



TABLE OF CONTENTS

	PAGE
Issue Presented	1
Statement of the Case	1
Statement of the Facts	1
ARGUMENT—The reservation of important powers to the individual towns and regional school districts is sufficient to distinguish the Connecticut Re- gional School System from school systems which have been held to violate the one-person-one-vote rule	3
Addendum—Statutes	15

TABLE OF AUTHORITIES

Cases:

<i>Associated Enterprises, Inc. v. Toltec Watershed Dis- trict</i> , 410 U.S. 743 (1973)	13
<i>Avery v. Midland County</i> , 390 U.S. 474 (1968) ...3, 4, 5, 6	
<i>Board of Education of Tri-Valley Central District Services</i> , 37 App. Div. 2d 330, 325 N.Y.S. 2d 592 (1971), aff'd, 31 N.Y. 2d 1020, 341 N.Y.S. 2d 897 (1973), appeal dismissed, 414 U.S. 99211, 12, 13	
<i>Community College of Beaver County v. School Dis- trict of the Borough of Aliquippa</i> , 4 Pa. Cmwlth. 483, 287 A. 2d 844 (1972)	10, 12, 13
<i>Hadley v. Junior College District</i> , 397 U.S. 50 (1970)	3, 5, 6, 7, 10, 11, 12, 13, 14
<i>Keegan v. Town of Thompson</i> , 103 Conn. 418, 130 A. 707 (1925)	8

TABLE OF CONTENTS

	PAGE
<i>Leopold v. Young</i> , 340 F. Supp. 1014 (D. Vt. 1972)	12, 13
<i>Powers v. Maine School Administrative District No. 1</i> , 359 F. Supp. 30 (D. Me. 1973)	12, 13
<i>Rosenthal v. Board of Ed. of Cent. High Sch. Dist. No. 3, et al.</i> , 497 F. 2d 726 (C.A.-2, 1974)	7, 10, 14
<i>Salyer Land Co. v. Tulare Lake Basin Water Storage District</i> , 410 U.S. 719 (1973)	6, 13
<i>Second School District of Glastonbury</i> , 86 Conn. 590, 86 A. 577 (1913)	8
 <i>Statutes:</i>	
<i>Connecticut General Statutes</i> , Section 10-46, 10-47, 10-51, 10-56, 10-60, 10-220, 10-221, 10-240, 10-241	7, 8, 9
<i>16 Vermont Statutes Annotated</i> , Section 563 (15) ...	12

BRIEF OF APPELLANT TOWN OF BETHLEHEM

Issue Presented

Does the one-person-one-vote rule apply to the election of members of the board of education of a regional school district organized pursuant to the provisions of the Connecticut General Statutes?

Statement of the Case

This action was brought in the United States District Court for the District of Connecticut by the plaintiff, a citizen, elector and taxpayer of the Town of Woodbury, Connecticut to obtain a permanent injunction requiring the reorganization of Nonnewaug Regional School District No. 14. On the plaintiff's motion for summary judgment, District Judge Jon O. Newman held that the allocation of membership on the regional district's Board of Education deprived the electors of the Town of Woodbury of equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution. The defendant Town of Bethlehem has taken this appeal from that decision.

Statement of Facts

Nonnewaug Regional School District No 14 was established by the Towns of Woodbury and Bethlehem, Connecticut on May 20, 1968, by a vote of the majority of the electors in each of the towns. It was organized pursuant to and now operates under the provisions of Connecticut General Statutes pertaining to regional school districts. Under section 10-47 of the Connecticut General Statutes, such a regional *board* is not possessed of general governmental powers, but is vested with very specific and restricted

powers. Primary control over all public schools within each town is vested in the towns themselves, acting individually or jointly through regional *school districts*.

In his complaint and substitute complaint, the plaintiff alleged that the formation of the Nonnewaug Regional School District's Board of Education constitutes a violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. The Regional Board of Education serving the Nonnewaug Regional School District consists of eight members, four elected from each of the two towns. According to the United States Census of Population, the respective populations were 5,869 for Woodbury and 1,923 for Bethlehem; the respective electorates were 3,653 for Woodbury and 1,298 for Bethlehem.

The basis for determining the size and composition of a regional school board was determined by statutory procedure, requiring approval of the relative representation of the towns by referenda held in each participating town.

The regional Board of Education was not possessed of general governmental powers, but was vested with specific powers under section 10-47 of the Connecticut General Statutes. The Board had no power to levy and collect taxes or even to propose taxes, that power vesting in the towns. The Board had no power to issue bonds, fund school projects or to approve budgets, those powers being vested in the voters of the Regional School District.

Under the Connecticut General Statutes Sections 10-47 and 10-51, the powers of the Regional School Districts are exercised at the annual *district* meetings or such special *district* meetings as may be called during the district fiscal year. These meetings must be warned and conducted in the same manner as town meetings, and each voter in the district is entitled to one vote. The Regional Board's budget is proposed to the voters at the district meetings and is either adopted or rejected by a majority of the voters.

ARGUMENT

The reservation of important powers to the individual towns and regional school districts is sufficient to distinguish the Connecticut Regional School System from school systems which have been held to violate the one-person-one-vote rule.

The principle that the one-person-one-vote rule is applicable to local government elections was enunciated by the United States Supreme Court in the case of *Avery v. Midland County*, 390 U.S. 474 (1968). The Court there said that the Constitution imposes one ground rule for the development of the arrangements of local government. The rule is:

a requirement that units with general governmental powers over an entire geographical area not be apportioned among single-member districts of substantially unequal population.

Id. at 485. That a regional body entrusted with the supervision and administration of educational affairs for the district may be so organized as to have "general governmental powers" over the district, and hence to be subject to the one-person-one-vote requirement, was found by the Court in *Hadley v. Junior College District*, 397 U.S. 50 (1970).

In the *Hadley* case, the Court was called upon to decide whether the Constitution permitted election of junior college trustees for a regional junior college district under a statutory formula which resulted in the systematic dilution of the votes of the electors in the more populous school districts comprising the junior college district. The Court held that the statutory method of election could not stand in light of the one-person-one-vote rule. In discussing the powers of the board of trustees, it said:

Appellants in this case argue that the junior college trustees exercised general governmental powers over

the entire district and that under *Avery* the State was thus required to apportion the trustees according to population on an equal basis, as far as practicable. Appellants argue that since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college, their powers are equivalent, for apportionment purposes, to those exercised by the County commissioners in *Avery*. We feel that these powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here.

397 U.S. at 53 (footnotes omitted).

The holding in *Hadley* rested on the Court's finding that the trustees in that case did exercise "general law-making powers," powers general enough and with sufficient impact throughout the district to require the application of the one-person-one-vote apportionment rule. There is no indication in the holding that every regional board formed for whatever purpose, or even those formed to deal with educational matters, would thereby automatically be subject to the rule. What is apparent from the decision is that to determine whether or not the rule is constitutionally mandated with respect to any local governmental unit, it is necessary to assess the nature of the actual powers delegated to that unit by the legislature to see whether they are sufficient to invoke the *Avery* doctrine. As will be seen, those courts which have had to rule on the application of the *Hadley* case to particular regional school

district situations have all sought to make such a determination.

The reason why a careful analysis is required of the nature of any local government unit to which the one-person-one-vote rule may be determined to be applicable is perhaps best spelled out by the Supreme Court itself in the *Avery* decision. The Court there said:

This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems.

...
(T)he Constitution and this Court are not roadblocks in the path of innovation, experiment and development among units of local government. We will not bar what Professor Wood has called "the emergence of a new ideology and structure of public bodies, equipped with new capacities and motivations . . . "

390 U.S. at 485. It is, of course, true that once a court has determined that the unit of local government has such powers as to fall within the test of *Avery*, the court may not then balance the constitutional requirements of that holding against whatever benefits of the electoral scheme are presented to it. It is submitted, however, that the result of the *Hadley* holding, if it were to be applied to all regional school administration schemes without regard to their differences and unique characteristics, would be to effectively straitjacket the development of such cooperative efforts unduly, beyond the constitutional requirements laid down in *Avery*. Clearly, this was not the intention of the Court in *Hadley*.

The necessity for inquiry into the unique circumstances surrounding each case in the application of the one-person-

one-vote rule to local governmental units was recently emphasized by the Supreme Court's holding in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973). In *Salyer*, the Court denied a challenge to the provisions of the California Water Code which provided that the board of directors of a water storage district, which existed for the purpose of the storage and distribution of irrigation waters to farms within the district and whose costs were assessed against landowners in proportion to the benefit to their lands were to be elected by the votes of the district's landowners only, and that their votes were to be weighed according to the assessed valuation of their lands. Recognizing the special circumstances present in the case, the Court held that the water storage district, by reason of its "special limited purpose and of the disproportionate effect of its activities on landowners as a group," *id.* at 728, was not such a local unit to which the requirement of elections in compliance with the one-person-one-vote rule attaches.

Since the application of the one-person-one-vote rule is limited to those governmental units which exercise "general governmental powers over the entire geographical area served by the body," as that term is used in *Avery*, 390 U.S. at 485, it becomes necessary to examine the powers allocated to regional school Boards in Connecticut to see whether they fit within the scope of the rule. It is submitted that judged against the *Hadley* decision and other decisions subsequent to that case, they do not.

In *Hadley*, the Court was confronted with the question of the application of the one-person-one-vote rule to a district board which had governmental powers substantially greater than those possessed by regional school boards in Connecticut. In that case the powers of the junior college trustees included the powers to (1) hire and fire teachers, (2) make contracts, (3) collect fees, (4) supervise and discipline students, and (5) in general, to manage the operation of the

junior college. Since the board of education in the instant case is responsible for providing free public education, it does not collect fees, but it does possess those other purely administrative powers under its general authority to maintain and operate the public schools in the district. See Conn. Gen. Stats. sections 10-220, 10-47. In addition, however, the board of trustees in the *Hadley* case possessed the important powers to (1) levy and collect taxes, (2) issue bonds, and (3) pass on petitions to annex school districts and acquire property by condemnation. Similarly, in the case of *Rosenthal v. Board of Education of Central High School District No. 3 of Town of Hempstead et al.*, 497 F. 2d 726, 728 (2d Cir. 1974), cited by Judge Newman in his Memorandum of Decision (App. 26), the Central Board had the power to issue bonds, adopt budgets, and, subject to approval of the electors, select sites and plans and propose taxes for school buildings.

Unlike the board of trustees in the *Hadley* case, or the Central Board in the *Rosenthal* case, a board of education of a Connecticut regional school district lacks these important powers. These boards are not possessed of broad legislative powers, but are vested with specific administrative powers under Section 10-47 of the General Statutes as well as all the powers and duties of local boards of education as are not inconsistent with regional school laws. The regional board of education does not have the power to levy and collect taxes. That power is vested in the towns. The Regional Board of Education does not have the power to issue bonds or acquire school sites by condemnation. That power is vested in the towns and regional Districts themselves. District action is controlled by district-wide meetings or referenda where each District resident has one vote and therefore, equality of voting strength is protected. Section 10-51 of Conn. Gen. Stats. The distinction between the powers of the district voters as opposed to the board of education is illustrated by Section 10-240 of the Connec-

tient General Statutes which provides:

Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter.

The underlying legislative intent of this section was to transfer the control of all the public schools within each town to the town itself, which for this purpose was constituted a school district. See *Keegan v. Town of Thompson*, 103 Conn. 418, 130 A. 707 (1925); *Second School District of Glastonbury*, 86 Conn. 590, 86A 577 (1913). Section 10-241 of the General Statutes provides further that "(e)ach school district shall be a body corporate" and possess certain powers, including the power to lay taxes. In cases where a number of towns join together to establish a regional school district, that district is vested with all of the powers possessed by an individual town school district except the power to tax which is always reserved to the town itself.

In Connecticut, boards of education serving Regional School Districts have the duty of maintaining good public elementary and secondary schools and promoting the educational interests of the State. They have specifically limited powers to hire and dismiss teachers, to maintain school buildings, provide transportation of school children, and provide such educational activities as will best serve the interests of the towns. Conn. Gen. Stat. Section 10-220. They are charged with prescribing rules for the management of studies, classification and discipline in the public schools, Conn. Gen. Stats. Section 10-221. Under Section 10-47 of the Conn. Gen. Stats., Regional boards of education have the power to purchase property for school purposes and to build and equip schools. However, when this statute is read in light of those statutes restricting the

power to raise taxes and allocate funds for such purposes to the town or district voters, Conn. Gen. Stats. section 10-241, Conn., Gen. Stats. section 10-51, it is clear that the exercise of substantive powers is controlled by the town or district voters rather than the Board.

This distinction between the powers of the school district, vested in the voters of the towns, and powers of the board of education was reaffirmed when the regional school laws were enacted by the Connecticut General Assembly. Section 10-56 of the General Statutes provides in part:

A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect school buildings and equip the same for school purposes, if so authorized by referendum.

This section vests important governmental powers such as the issuance of bonds and dealing with real property interests in the voters of the school district, not in the board of education. The primary function of the board of education is to "administer" the affairs of the regional school district. Conn. Gen. Stat. Section 10-46. Similarly, while the towns and regional school districts have the power to take land by eminent domain for school purposes, such powers are not granted to local or regional boards of education. In order to borrow additional funds, the regional board of education must have the authorization of a majority vote at a regional district meeting. *Id.* section 10-60. The budgetary process is such that the regional board is empowered only to prepare and submit an estimated budget, with the voters at a regional school district meeting having the power to accept or reject that budget. *Id.* section 10-51.

It is clear that the regional school board in the instant action has significantly less governmental power than did the board of trustees in the *Hadley* case or the central board in the *Rosenthal* case. The situation is probably more closely analogous to that found in *Community College of Beaver County v. School District of the Borough of Aliquippa*, 4 Pa. Cmwlth. 482, 287 A. 2d 844 (1972). Like *Hadley* this case also involved in part a challenge to election of the board of trustees of a community college on the one-person-vote principle. The Court noted:

The powers of a Board of Trustees of a Community College are limited by the Community College Act, Act of August 24, 1963, P.L. 1132 as amended 24 P.S. §§ 5201-5214. The Act provides that ". . . (t)he board of trustees shall supervise the expenditure of appropriations made by the local sponsor and shall conduct the business affairs of the community college in accordance with the rules, regulations and procedures approved by the local sponsor. . . ." 24 P.S. Section 5206(b). As recognized by the Pennsylvania Supreme Court in *Rettig v. Board of County Commissioners*, 425 Pa. 274, 277, 228 A. 2d 747, 749 (1967), this section

". . . now vests all fiscal authority, both the expenditure and raising of funds, in the local sponsor. That the actual administration of the operations of the community college is vested in the board of trustees poses no constitutional issue, . . . powers of this nature are frequently vested in other bodies subject to the general and fiscal supervision of a local governing body."

Thus, the spending power is vested in the local sponsor and supervision is vested in the Board of Trustees.

287 A. 2d. 847. The Court then went on to rule, noting *Hadley*, that the activities of the board, as limited by the

Community College Act, were insufficient to bring it within the applicability of the one-person-one-vote requirement.

In the case of *Board of Education of Tri-Valley Central District No. 1 v. Board of Cooperative Educational Services*, 37 App. Div. 2d 330, 325 N.Y.S. 2d 592 (1971), aff'd, 31 N. Y. 2d 1020, 341 N.Y.S. 2d 897 (1973), appeal dismissed, 414 U.S. 992, at issue was the applicability of the doctrine to a Board of Cooperative Services, formed under the laws of New York for the purpose of carrying out a program of shared educational services and instruction in special subject in the schools of the supervisor districts. The Board's powers included the power to appoint a district superintendent of schools, to provide services at the request of the component school districts and on a cooperative basis for school nurses, psychologists, teachers of art, musical and vocational and physical education, guidance counselors, cafeteria services, and to maintain and service school cafeterias. In furtherance of these objectives, it could employ teachers and other personnel, rent office and classroom space, and prepare a budget including the administrative expenses and the salaries of its teachers and other personnel necessary to carry out its programs. It also was empowered to borrow money in anticipation of revenues due it for services rendered to the component districts. The action was brought by one of the component districts which provided part of the financial support for the Board of Cooperative Services, and which sought to obtain a declaration that the method of selection of members of that Board was in contravention of the one-person-one-vote requirement. The Court held that the power conferred by statute on the Board to allocate its administrative expenses among the various component school districts did not constitute the power to tax. Relying partly on *Hadley*, the court stated:

Since the respondent has no power to tax, it is not subject to the one-man-one-vote rule and appellant's assertion that it is an unrepresentative body must fail.

325 N.Y.S. 2d at 594.

In contrast to the *Beaver County* and *Tri-Valley* cases, those cases which have held *Hadley* applicable to a regional board of education have done so only upon a finding of governmental powers resting in the board significantly greater than are present in the instant situation. In *Leopold v. Young*, 340 F. Supp. (D. Vt. 1972), the District Court stated:

In light of *Hadley* and the applicable Vermont Statutes, there can be no serious question but that the district school Board exercises general governmental functions in the performance of its duties. The powers of the school board include the determination and administration of the educational policies of the school district and the exercise of the broad powers given to the legislative branch of a municipality.

Id. at 1017. The Vermont Union High School District possessed administrative and educational powers similar in some respects to those delegated to regional school districts in Connecticut. In addition, however, the Vermont school district possessed general legislative powers, by virtue of 16 Vt. Stat. Ann. 563 (15), which includes among the powers of school boards the power to "exercise the general powers given to the legislative branch of a municipality." In contrast the Vermont statute's broad delegation of legislative powers to Boards of Education, Connecticut has reserved legislative powers to the voters at district meetings. The only "legislative" powers possessed by regional school districts are the powers to prescribe rules under Connecticut General Statute section 10-221 for the internal management and educational policies of the school system.

In *Powers v. Maine School Administrative District No. 1*, 359 F. Supp. 30 (D. Me. 1973), the district court found the defendant regional district to exercise the requisite governmental functions under *Hadley* requiring application of the one-person-one-vote principle. The court noted that the directors of a Maine school administrative district are au-

thorized to require the assessment of taxes by the member municipalities, to issue bonds with the approval of the district, and to borrow short term funds. As has been previously discussed, these powers are not granted to regional school boards of education by the statutes of Connecticut. It is submitted that the powers of the board in this situation are more closely analogous to those found in the *Beaver* and *Tri-Valley* cases than to those powers found in either the *Leopold* or *Powers* case. Under these circumstances, the Connecticut Boards of Education do not perform such general governmental functions as to invoke the application of the one-person-one-vote principle. Although, in *Hadley* the U.S. Supreme Court spoke broadly to the effect that all officials who perform governmental functions must be elected in a manner which satisfies the one-person-one-vote principle, the Court's holding is based upon the election of officials with broad legislative powers including the powers to levy and collect taxes. Moreover, since *Hadley*, the Supreme Court has recognized in the cases of *Salyer Land Company et al. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973) and *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 714 (1973), that certain single purpose governmental units with powers even greater than those possessed by regional school boards in Connecticut are not subject to the one-person-one-vote requirement. In the *Salyer* case, the Board of Directors of a water storage district who were not elected in compliance with the one-person-one-vote principle had the power to fix tolls and charges for the use of water. In the *Associated* case the Watershed District which was not elected in accordance with the one-person-one-vote principle had the power to levy and collect special assessments, acquire and dispose of property, exercise the power of eminent domain and to issue bonds. In both of these cases, the Supreme Court held that in view of the special limited purpose of these governmental units, and their disproportionate effect on

persons within them, the general requirement of one-person-one-vote did not apply.

It is, therefore, submitted that the Supreme Court has recognized the existence of circumstances which may justify the departure from strict adherence to the one-person-one-vote rule.

The circumstances of the present case involve the election of a board whose powers are purposely restricted by statute to require the approval of the electorate wherever the raising of taxes, appropriation of funds, issuance of bonds or acquisition of property is required. The Connecticut statutory scheme reduces the function of the board of education to the administrative task of carrying out the policies established by the voters of the school district. This characteristic, which was not present in the *Hadley* case, or even the *Rosenthal* case, is such a distinguishing circumstance, as the Court found in the watershed cases above, to allow constitutionally viable deviation from the strict rule of *Hadley* in the instant case.

CONCLUSION

For the above-stated reasons, the defendant-appellant Town of Bethlehem respectfully requests that this Honorable Court reverse the decision of the District Court and dismiss this action.

Respectfully submitted,

O'MALLEY, DENEEN, MESSINA
& OSWECKI
Attorneys for Appellant
Town of Bethlehem
20 Maple Avenue
Windsor, Connecticut 06095

ANDREW G. MESSINA, JR.

DONALD J. DENEEN
of Counsel

CONNECTICUT GENERAL STATUTES

§ 10-46. Regional board of education

(a) The affairs of the regional school district shall be administered by a regional board of education, which shall consist of not fewer than five nor more than nine members. Each member town shall elect at least one member. The committee report shall determine the number of members of such regional board and the representation of each town. The first members of such regional board of education shall be nominated and elected at a meeting of the legislative body of each town held within thirty days after the referendum creating the district. The regional board of education at its first meeting, called by the secretary of the state board of education within ten days from the time the last member town to appoint members to the regional board has done so, shall organize and the members shall serve until their successors are elected and qualify. At such meeting, the board shall determine the term of office of each member according to the following principles: (1) The term of office of each successor shall be four years; (2) to establish a continuity of membership, a system of rotation shall be used; if the board has an even number of members, one-half of such number shall be elected every two years and if the board has an uneven number of members, no more than a bare majority or a bare minority shall be elected every two years, except when the unexpired portion of the term of a vacated office must be filled; (3) the same system of rotation shall be used for election of the representatives of each member town, if possible; (4) if necessary, it shall be determined by lot which of the initial members shall serve the short terms; (5) at the first election of members in accordance with subsection (b) or (c) of this section, no more than half the offices held by initial board members shall be filled; (6) the offices held by the remaining initial board members shall be filled at the second election held in accordance with subsection (b) or (c) of this section. Thereafter, members of the board shall be nominated and elected in their respective towns in accordance with subsection (b) or (c) of this section as determined by the legislative body of each town.

(b) At least thirty days before the expiration of the term of office of any board member, a town meeting shall be held in accordance with chapter 90 to nominate and elect a successor. Any person who is an elector of such town may vote at such meeting. If a vacancy occurs in the office of any member of the regional board of education, the town affected, at a town meeting called within thirty days from the beginning of such vacancy, shall nominate and elect a successor to serve for the unexpired portion of the term in accordance with the above procedure.

(c) Board members shall be nominated and elected in the same manner as town officers in accordance with the provisions of title 9 except that (1) section 9-167a and parts II and III of chapter 146 shall not apply and (2) the board members so elected shall take office the first day of the month following the elections. If a vacancy occurs in the office of any member of the regional board of education, the legislative body of the town affected shall elect a successor to serve until the next general election, at which time a successor shall be elected to serve any unexpired portion of such term.

(d) All members of a regional board of education shall take office on the first day of the month following their election. Such board shall hold an organizational meeting in the month following the last election of members thereof held in the member towns in any calendar year at which time the board shall elect by ballot from its membership a chairman, a secretary, a treasurer and any other officer deemed necessary and may annually thereafter elect such officers. In the case of a tie vote in the balloting for any officer, such tie shall be broken by lot. The treasurer shall give bond to the regional board of education in an amount determined by the members thereof. The cost of such bond shall be borne by the district.

(1967, P.A. 333, § 1, eff. June 8, 1967; 1969, P.A. 698, § 8, eff. June 24, 1969; 1971, P.A. 679, § 1, eff. July 6, 1971.)

*Connecticut General Statutes***§ 10-47. Powers of regional board**

Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk.

(1967, P.A. 113, § 1, eff. May 23, 1967; 1969, P.A. 698, § 10, eff. June 24, 1969; 1973, P.A. 73-539.)

§ 10-51. Fiscal year. Budget. Payments by member towns. Investment of funds. Temporary borrowing

(a) The fiscal year of a regional school district shall be July first to June thirtieth. Except as otherwise provided in this subsection, not less than two weeks before the annual meeting held pursuant to section 10-47, the board shall hold a public district meeting to present a proposed budget for the next fiscal year. Any person may recommend the inclusion or deletion of expenditures at such time. After the public hearing, the board shall prepare an annual budget for the next fiscal year, make available on request copies thereof and deliver a reasonable number to the town clerk of each of the towns in the district at least five days before the annual meeting. At the annual meeting on the first Monday in May, the board shall present a budget which includes a statement of (1) estimated receipts and expenditures for the next fiscal year, (2) estimated receipts and expenditures for the current fiscal year, (3) estimated surplus or deficit in operating funds at the end of the current fiscal year, (4) bonded or other debt, (5) estimated per pupil expenditure for the current and for the next fiscal year and (6) such other information as is necessary in the opinion of the board. Persons present and eligible to vote under section 7-6 may accept or reject the proposed budget except as provided below. No person who is eligible to vote in more than one town in the regional school district is eligible to cast more than one vote on any issue considered at a regional school district meeting or referendum held pursuant to this section. Any person who violates this section by fraudulently casting more than one vote or ballot per issue shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not

Connecticut General Statutes

less than one year nor more than two years and shall be disenfranchised. If the regional school district is comprised of four or more towns, the regional board of education may, in the call to the meeting, designate that the vote on the motion to adopt the budget shall be by paper ballots or by a "yes" or "no" vote on the voting machines in each of the member towns on the day following the district meeting. Two hundred or more persons qualified to vote in any regional district meeting called to adopt a budget may petition the regional board, in writing, at least three days prior to such meeting, requesting that any item or items on the call of such meeting, be submitted to the persons qualified to vote in the meeting for a vote by paper ballot or on the voting machines in each of the member towns on the day following the district meeting and in accordance with the appropriate procedures provided in section 7-7. If a majority of such persons voting reject the budget, the board shall, within two weeks thereafter and upon notice of not less than one week, call a district meeting to consider the same or an amended budget. Such meetings shall be convened at such intervals until a budget is approved. After the budget is approved, the board shall estimate the share of the net expenses to be paid by each member town in accordance with subsection (b) of this section and notify the treasurer thereof. With respect to adoption of a budget for the period from the organization of the board to the beginning of the first full fiscal year, the board may use the above procedure at any time within such period. If the board needs to submit a supplementary budget, the general procedure specified in this section shall be used.

(b) For the purposes of this section, "net expenses" means estimated expenditures less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of capital outlay and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school district during the preceding school year bears to the total number of such pupils in all the member towns. Until the regional school district has been in operation for one year, such amounts shall be based on the average daily membership of pupils in like grade from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year.

(c) The board shall deposit or invest temporarily any funds which are not needed immediately for the operation of the school district in any manner permitted school districts or municipalities in chapter 112. Any income derived from such deposits or investments shall be used at least semiannually to reduce the net expenses. The board shall use any budget appropriation which has not been expended by the end of the fiscal year to reduce the net expenses of the district for the following fiscal year. The board may borrow funds temporarily in anticipation of payments to be made to it by a member town or the state, for the operation of its schools.

(1969, P.A. 698, § 13, eff. June 24, 1969; 1971, P.A. 679, §§ 3, 4, eff. July 6, 1971.)

*Connecticut General Statutes***§ 10-56. Corporate powers. Bonds issues**

(a) A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole. A regional board of education may expend any premium in connection with such issue, interest on the proceeds of such issue or unused portion of such issue to add to the land or buildings erected or purchased and for the purchasing and installing of equipment for the same. Such bonds shall be denominated "Bonds of regional school district number . . . of the State of Connecticut." Such bonds shall be serial bonds, with coupons attached, and registerable as to principal and interest or as to principal alone, shall be signed by the chairman and the treasurer of the regional board of education and shall bear such rate of interest, mature in such substantially equal instalments and be issued in such denominations and at such times and places as shall be determined by such board. The first instalment of any series of bonds shall mature not later than two years from the date of the issue of such series and the last instalment of such series shall mature not later than twenty years therefrom. Such bonds, when executed, issued and delivered, shall be general obligations of such district and the member towns, according to their terms. Any regional school district which has issued any bonds or other obligations pursuant to any general statute or special act may redeem them by issuing new bonds or other obligations.

(b) "Annual receipts from taxation" means the receipts from taxation of the member towns for the fiscal year next preceding the close of the last fiscal year of such regional school district. Notwithstanding the provisions of section 7-374, any regional school district may assume bonds or other indebtedness of any member town as part of the purchase price of any property for school purposes or issue bonds or notes, provided the aggregate indebtedness of such district shall not exceed: (1) In the case of a regional school district serving the same towns as are served by two or more town school districts, two and one-quarter times the annual receipts from taxation or (2) in the case of a regional school district empowered to provide for the member towns all programs under the general supervision and control of the state board of education, four and one-half times such annual receipts from taxation. Any regional school district may issue additional bonds or notes in an amount not to exceed three and one-half times such annual receipts from taxation less the aggregate indebtedness as defined in section 7-374 for the member towns of such district.

(c) When a district has been authorized to issue general obligation bonds as provided by this section, the board may authorize, for a period not to exceed four years, the issue of temporary notes in anticipation of the receipt of the proceeds from the sale of such bonds. Notes issued for a shorter period of time may be renewed by the issue of other notes, provided the period from the date of the original notes to the maturity of the last notes issued in renewal thereof shall not exceed four years. The term of such notes shall not be included in computing the time within which such bonds shall mature. The provisions of section 7-373 shall be deemed to apply to such notes. The board shall determine the date, maturity, interest rate, form, manner of sale and other terms of such notes which shall be general obligations of the regional school district and member towns. Such notes may bear interest or be sold

Connecticut General Statutes

at a discount. The interest or discount on such notes and any renewals thereof and the expense of preparing, issuing and marketing them may be included as a part of the cost of the project for the financing of which such bonds were authorized. Upon the sale of such bonds, the board shall apply immediately the proceeds thereof, to the extent required, to the payment of the principal and interest of all notes issued in anticipation thereof or deposit the proceeds in trust for such purpose with a bank or trust company, which may be the bank or trust company, if any, at which such notes are payable.

(d) Subject to the provisions of subsection (c) of this section, the board may deposit or invest the proceeds of bonds or of notes issued in anticipation thereof in the same manner and to the same extent as permitted school districts or municipalities in chapter 112.

(1967, P.A. 626, § 2, eff. June 21, 1967; 1967, P.A. 674, eff. Oct. 1, 1967; 1969, P.A. 132, § 2, eff. May 14, 1969; 1969, P.A. 698, § 16, eff. June 24, 1969.)

§ 10-60. Borrowing in addition to bonds

In addition to the power to issue bonds as provided by section 10-56, such regional board of education may, when so authorized by a majority vote at a regional school district meeting called for such purpose, borrow sums of money in an amount which shall not exceed in the aggregate two hundred thousand dollars for a period not to exceed five years and pay interest thereon for acquiring lands, securing the services of architects and professional consultants, the operation and maintenance of regional schools, the installation of equipment therein and contingent or other necessary expenses connected therewith. Persons eligible to vote under the provisions of section 7-6 may vote on such issue. Such loans shall be in the name of and shall be general obligations of such district and the member towns. The chairman and treasurer of the board shall sign the note evidencing any such loan.

(1969, P.A. 290, § 1, eff. May 28, 1969; 1969, P.A. 698, § 17, eff. June 24, 1969.)

*Connecticut General Statutes***§ 10-220. Duties of boards of education**

Boards of education shall maintain in their several towns good public elementary and secondary schools, implement the educational interests of the state as defined in section 10-4a, and provide such other educational activities as in their judgment will best serve the interests of the town; provided any board of education may secure such opportunities in another town in accordance with provisions of the general statutes and shall give all the children of the town as nearly equal advantages as may be practicable; shall have charge of the schools of their respective towns; shall make a continuing study of the need for school facilities and of a long-term school building program and from time to time make recommendations based on such study to the town; shall have the care, maintenance and operation of buildings, lands, apparatus and other property used for school purposes; shall determine the number, age and qualifications of the pupils to be admitted into each school; shall employ and dismiss the teachers of the schools of such towns subject to the provisions of sections 10-151 and 10-158a; shall designate the schools which shall be attended by the various children within their several towns; shall make such provisions as will enable each child of school age, residing in the town, who is of suitable mental and physical condition, to attend some public day school for the period required by law and provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose may make contracts covering periods of not more than five years; may arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently; shall cause each child between the ages of seven and sixteen living in the town to attend school in accordance with the provisions of section 10-184, and shall perform all acts required of them by the town or necessary to carry into effect the powers and duties imposed upon them by law.

(1969, P.A. 690, § 4, eff. July 1, 1969.)

§ 10-221. Boards of education to prescribe rules

Boards of education shall prescribe rules for the management, studies, classification and discipline of the public schools and, subject to the control of the state board of education, the textbooks to be used; shall make rules for the arrangement, use and safe-keeping, within their respective jurisdictions, of the school libraries and approve the books selected therefor, and shall approve plans for schoolhouses and superintend any high or graded school in the manner specified in this title. (1949 Rev., § 1479.)

*Connecticut General Statutes***§ 10-240. Control of schools**

Each town shall maintain the control of all the public schools within its limits and for this purpose shall be a school district and shall have all the powers and duties of school districts, except so far as such powers and duties are inconsistent with the provisions of this chapter. (1949 Rev., § 1497.)

§ 10-241. Powers of school districts

Each school district shall be a body corporate and shall have power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; to build, equip, purchase and rent schoolhouses and make major repairs thereto and to supply them with fuel, furniture and other appendages and accommodations; to establish and maintain schools of different grades; to establish and maintain a school library; to lay taxes and to borrow money for the purposes herein set forth; to make agreements and regulations for the establishing and conducting of schools not inconsistent with the regulations of the town having jurisdiction of the schools in such district; and to employ teachers, in accordance with the provisions of section 10-151, and pay their salaries. When such board appoints a superintendent, such superintendent may, with the approval of such board, employ the teachers. (1949 Rev., §§ 1498, 1507; 1953, Supp. § 955d.)

VERMONT GENERAL STATUTES

Annotated 1974 Sec. 563

§ 563. Powers of school boards

The school board of a school district, in addition to other duties specifically assigned by law, shall:

- (1) Determine the educational policies of the school district, and prescribe rules and regulations for the conduct and management of the public schools in the district. Such rules and regulations shall be of general application to the district, shall be in writing, codified, and made available to the public.
- (2) Have the power to take any action, which is required for the sound administration of the school district. The commissioner, with the advice of the attorney general, upon application of a school board, shall decide whether any action contemplated or taken by a school board under this subsection is required for the sound administration of the district and is proper under this subsection. His decision shall be final.
- (3) Subject to the authority vested in the electorate or any school district official, have the possession, care, control and management of the property of the school district.
- (4) Adopt regulations at a regularly scheduled school board meeting, after notice of the board's intent to do so published in the manner required for a school district meeting, stating the substance of the proposed regulations.
- (5) Keep the school buildings and grounds in good repair, suitably equipped, insured and in safe and sanitary condition at all times.
- (6) Have discretion to furnish more than twelve years of instruction to pupils in worthy and deserving cases.
- (7) May relocate or discontinue use of a schoolhouse or facility, subject to the provisions of section 821 and section 822 of this title.
- (8) Examine claims against the district for school expenses and draw orders for such as shall be allowed by it payable to the party entitled thereto. Such orders shall state definitely the purpose for which they are drawn. However, it shall be lawful for a school board to submit to its treasurer a certified copy of those portions of the board minutes, properly signed by the clerk and chairman, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the treasurer, and such certified copy shall serve as full authority to the treasurer to make the payments as thus approved. Nothing contained in this subsection shall preclude the use of a voucher system, or any other system of sound accounting and business procedure, provided that such system reflects the facts, and that the same is in accordance with regulations prescribed by or approved by the state board.

Vermont General Statutes

- (9) Establish with the advice and consent of the auditor of accounts and the commissioner, a system of accounts for the proper control of school district finances and for stating the annual financial condition of the school district.
- (10) Not less than fifteen days prior to the district's annual meeting, prepare and distribute to the electorate a report of the conditions and needs of the district school system, including the superintendent's and treasurer's annual report, for the previous school year, and an auditor's report prepared pursuant to section 1683 of Title 24.
- (11) Annually prepare and include in the annual report a budget for the next school year according to such major categories as may from time to time be prescribed by the commissioner.
- (12) Upon prior recommendation by the superintendent employ and dismiss such persons as may be required to carry out the work of the school district.
- (13) Annually, on or before August 5, prepare a report for the school district containing, on forms prescribed and furnished by the commissioner, a classified statement under oath of the actual cash expenditures of the school district for the preceding school year for school purposes, and such other information as the commissioner prescribes. Such report shall be prepared in triplicate, one copy shall be retained by the superintendent, and one copy shall be sent to the school district clerk and the other sent to the commissioner on or before August 15. A district shall not be entitled to receive any portion of school money distributed by the state unless such returns are made.
- (14) Provide, at the expense of the district, subject to the approval of the superintendent, all text books, learning materials, equipment and supplies.
- (15) Exercise the general powers given to a legislative branch of a municipality.
- (16) By its chairman, or any person designated by him whose appointment is recorded in the minutes of the board, execute contracts on behalf of the school district.
- (17) Upon authorization by the electorate, employ a public accountant to audit the financial affairs of the school district and prepare the annual financial report. If a public accountant is employed, his report shall be included in the annual report.
- (18) [Repealed.]—Added 1969, No. 298 (Adj. Sess.), § 40, eff. July 1, 1970; amended 1971, No. 200 (Adj. Sess.).

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,
against

NONNEWAUG REGIONAL SCHOOL DISTRICT
NO. 14, ET AL.,

Defendants-Appellants.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON

being duly sworn, deposes

and says that he is over the age of 18 years. That on the 12th day of March , 1975, he served two copies of the Brief of Appellant Town of Bethlehem (See attached list) on

the attorney s for ~~the~~ See attached list by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorney's at No. See attached list () N. Y. that being the address designated by them for that purpose upon the preceding papers in this action.

David F. Wilson

Sworn to before me this

12th day of March , 1975 .

Courtney J. Brown
COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976

Carl R. Burns
Attorney for Appellee Scott
143 Rowayton Avenue
Rowayton, Connecticut 06853

W. Fielding Secor
Attorney for Appellee Town of Woodbury
and First Selectman
41 Church Street
Waterbury, Connecticut 06720

Vause & Sullivan
Attorneys for Appellant Nonnewaug
Regional School District No. 14
410 Asylum Street
Hartford, Connecticut 06103